



EXECUTIVE REGULATION

No. 1-04T

MONTGOMERY COUNTY FIRE AND RESCUE COMMISSION

EFFECTIVE DATE:

12/12/2003

TITLE

ENFORCEMENT PROCEDURE FOR THE FIRE ADMINISTRATOR
REGARDING LOCAL FIRE AND RESCUE DEPARTMENT PERSONNEL

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MONTGOMERY COUNTY FIRE AND RESCUE COMMISSION TEMPORARY REGULATION

ENFORCEMENT PROCEDURE FOR THE FIRE ADMINISTRATOR REGARDING LOCAL FIRE AND RESCUE DEPARTMENT PERSONNEL

Issued by: Montgomery County Fire and Rescue Commission

Temporary Executive Regulation No. 1-04T

Authority: County Code, Section 21-3(g)

Council Review Method (2) Under Code Section 2A-15

Register Volume 21, Issue 1

Effective Date: December 12, 2003

SUMMARY: This Temporary Regulation establishes enforcement procedures for use when the Fire Administrator evaluates the discipline imposed by a Local Fire and Rescue Department under Section 21-3(g) of the County Code.

The Fire Administrator has determined that it is in the public interest, and to the benefit of the Montgomery County Fire and Rescue Service, to implement this document immediately as a Temporary Regulation, under County Code Section 2A-15. The Fire and Rescue Commission adopted this Enforcement Procedure to protect the health and safety of Montgomery County Fire and Rescue Service personnel, and to ensure public safety. The Commission anticipates adopting the permanent FRC executive regulation on this subject under Council review Method (2) within 90 days. On its adoption, the permanent regulation will supersede this Temporary Regulation.

DEADLINES: Montgomery County Register Comment: January 31, 2004
Montgomery County Fire Board Comment: January 31, 2004
Div. of Fire and Rescue Services Comment: January 31, 2004
Div. of Vol. Fire and Rescue Services Comment: January 31, 2004
Local Fire and Rescue Depts. Comment: January 31, 2004

ADDRESS: Please send all comments pertaining to the proposed regulation to Beth Feldman, Montgomery County Fire and Rescue Service, 12th Floor, 101 Monroe Street, Rockville, MD 20850. Comments may also be e-mailed to beth.feldman@montgomerycountymd.gov

STAFF: For additional information, please call Beth Feldman, Montgomery County Fire and Rescue Service, on (240) 777-2423.



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BACKGROUND: The Fire Administrator is the enforcement authority for all Montgomery County Fire and Rescue Service (MCFRS) policies and regulations. This regulation establishes standards and procedures if the Fire Administrator disciplines a Local Fire and Rescue Department (LFRD) volunteer or employee, including administrative personnel, for a serious violation involving federal, State, or County laws, regulations, policies, or procedures, or any order of the Fire Administrator. Each LFRD must initially administer timely and appropriate discipline concerning its employees and volunteers, and the Fire Administrator may then take disciplinary action involving an LFRD's employee or volunteer only after the Fire Administrator finds that the LFRD has not satisfactorily resolved a problem in a timely manner.

Sec. 1. **Purpose.** This regulation establishes standards enabling the Fire Administrator to determine whether a LFRD has satisfactorily resolved a disciplinary problem in a timely manner, and procedures for use if the Fire Administrator finds it necessary to discipline LFRD personnel.

Sec. 2. **Applicability.** This regulation applies to all LFRDs and their volunteers and employees, including administrative personnel.

Sec. 3. **Definitions.**

- a. **Fire Administrator.** The non-uniformed department head of the Montgomery County Fire and Rescue Service who is appointed by the County Executive. The Fire Administrator serves as ex officio chair of the Fire and Rescue Commission and is responsible for implementing and enforcing Commission policies, administering all fire and rescue services provided in the County, and supervising the Chiefs of both the Division of Fire and Rescue Services, and the Division of Volunteer Fire and Rescue Services.
- b. **Integrated Emergency Command Structure (IECS).** The organizational structure and chain of command applicable to all providers of fire, rescue and emergency medical services, on all emergency incidents, as contemplated by Montgomery County Code Section 21-8, and Fire and Rescue Commission Regulation 02-01 (effective 6/26/01).
- c. **Local Fire and Rescue Department (LFRD).** Component of the Montgomery County Fire and Rescue Service that provides direct fire suppression, rescue,



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and emergency medical services, in conjunction with the Division of Fire and Rescue Services.

- d. **LFRD Personnel.** For the purposes of this regulation, unless stated otherwise, this definition includes a Local Fire and Rescue Department's firefighters, rescuers, and emergency medical service personnel (including employees and volunteers), and its administrative personnel.
- e. **Montgomery County Fire and Rescue Service (MCFRS).** The combined service comprising the Division of Fire and Rescue Services and the Division of Volunteer Fire and Rescue Services, which includes the Local Fire and Rescue Departments.
- f. **Office of Internal Affairs (OIA).** The office within MCFRS responsible to assist the Fire Administrator and Fire and Rescue Commission in monitoring compliance with: law; County and Commission policies, procedures, and regulations; and such other matters as assigned by the Fire Administrator and the Fire and Rescue Commission.
- g. **Serious Violation.** An alleged incident by MCFRS personnel involving a threat to the public or personnel safety, or related to a violation that undermines the public trust and confidence in the fire and rescue service. A serious violation includes an egregious: negligent act or omission; theft of property; criminal felony; assault; battery; or other violation of law, County or Commission policy or regulation, or any order of the Fire Administrator.

Sec. 4. **Policy Statement.** This regulation establishes guidelines and procedures to ensure the consistent and expeditious resolution of disciplinary matters regarding **LFRD personnel** who are accused of having committed a **serious violation**.

- a. This regulation does not supersede or limit the **Fire Administrator's** responsibility or authority to conduct investigations or take actions necessary to prevent **MCFRS** employees and **personnel** from being discriminated against, harmed, or subjected to threats or acts of violence in the workplace.
- b. This regulation must not modify or limit the **Fire Administrator's** authority to take appropriate action concerning a **serious violation** of conduct, under the Commission's Executive Regulation 22-00AM, *Code of Ethics and On-Duty Personal Conduct*.



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- c. The **Fire Administrator** may require **LFRD personnel** to relinquish possession of **MCFRS** or **LFRD** property and equipment to its proper owner at any time.

Sec. 5. Procedure.

- a. To enable the **Fire Administrator** to review an **LFRD's** resolution of a disciplinary matter under Section 21-3(g) of the County Code, and to assist the **Fire Administrator** to determine if the matter has been satisfactorily resolved, the procedure in Sec. 5.a.1.-4. must be followed.
1. Each **LFRD** must immediately notify the **Fire Administrator** of any alleged **serious violation** ("violation") by **LFRD personnel** under FRC Regulation No. 22-00AM, including those involving an allegation that an individual has violated: any federal, State, or County law or regulation; any Commission policy, procedure, or regulation; or any order of the **Fire Administrator**.
 2. Each **LFRD** must take action on, and compile a file or record of, each oral or written notification of an alleged **serious violation**, including a violation of any federal, State, or County law, regulation, Commission policy, procedure, or regulation, or any order of the **Fire Administrator** by **LFRD personnel**. The **LFRD** must satisfactorily resolve an allegation of a **serious violation** within 45 days of receiving notification of its occurrence, unless the **Fire Administrator** extends this time period. When an **LFRD** Chief or President has taken action on a **serious violation**, they must notify the **Fire Administrator** within 24 hours of taking such action.
 3. Each **LFRD** volunteer must provide the **Fire Administrator** with any information not otherwise legally privileged that the **Fire Administrator** reasonably requires to evaluate the propriety of an **LFRD's** disciplinary action involving a **serious violation**. The **Fire Administrator** must maintain the confidentiality of all personnel information provided by an **LFRD**. An **LFRD's** failure to provide information may result in a finding by the **Fire Administrator** that the **LFRD** has failed to satisfactorily resolve a problem in a timely manner.
 4. The **Fire Administrator** must consider all information related to an alleged **serious violation** to determine whether an **LFRD** has satisfactorily resolved a disciplinary problem in a timely manner. The **Fire Administrator** must consider:



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- A. the scope, methodology, timeliness, and findings of an **LFRD** and/or an **OIA** investigation;
- B. whether the results of an investigation indicate that a **serious violation** has occurred, including a violation of: federal, State, or County law or regulation; Commission policy, procedure, or regulation; or whether any order of the **Fire Administrator**, has been sustained, unsustained, unfounded, or exonerated;
- C. whether the penalty or disciplinary action taken by an **LFRD** was appropriate and effective, given the nature and gravity of the **serious violation**;
- D. whether the **LFRD** considered mitigating or compounding circumstances, including past performance and/or past occurrences of a similar nature; prior remedial or disciplinary action in the past 5 years; or other infractions;
- E. whether the problem or conditions leading to the **serious violation** continue to exist, or whether the probability of a recurrence remains;
- F. the relationship of the misconduct to the individual's assigned duties and responsibilities;
- G. the discipline given to those in comparable positions throughout **MCFRS** for similar behavior;
- H. the severity of the individual's conduct and its actual or possible consequences;
- I. if the individual was aware, or should have been aware, of the relevant: federal, State, or County law or regulation; Commission policy or procedure; or order of the **Fire Administrator** that the individual is charged with violating;
- J. the risk of, or the resulting harm to the public and **MCFRS** personnel;



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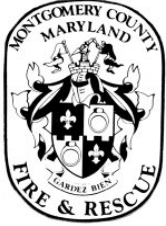
- K. the finding of an ad hoc committee convened under the *Code of Ethics and On-Duty Personal Conduct*, FRC Executive Regulation No. 22-00AM;
- L. damage to **MCFRS'** reputation and the public trust; and
- M. any other relevant fact or circumstance.

b. Findings by the **Fire Administrator**.

1. After reviewing the information provided under Section 5.a.4., the **Fire Administrator** must issue a written decision to the **LFRD** within 14 business days, indicating whether he/she has found that the **LFRD** has satisfactorily resolved the disciplinary matter in a timely manner. If the **LFRD** has not satisfactorily resolved the disciplinary matter, or has failed to comply with this regulation, the **Fire Administrator** may initiate disciplinary action against the **LFRD personnel** and/or the **LFRD**.
2. Notwithstanding Sec. 5.b.1., the **Fire Administrator** may remand the matter with instructions to the **LFRD** to take further action without making a determination. The **Fire Administrator's** remand must include a timeframe for the **LFRD** to resolve the matter.

Sec. 6. **Fire Administrator's Discipline**

- a. The **Fire Administrator** must apply discipline appropriately, and consider the factors indicated in Sec.5.a.4.
- b. The **Fire Administrator** is not required to impose discipline in a particular progressive order, or to always begin with the least severe penalty. The **Fire Administrator** may take disciplinary action, including permanent expulsion of **LFRD personnel** from the **IECS**, and dismissal from **MCFRS** premises, and/or other action consistent with the gravity and severity of the violation.
- c. **Types of disciplinary actions.**
 1. **Written reprimand.** A written reprimand is the inclusion of a written statement about a specific act of misconduct or violation of a law, regulation, order, directive, policy, or procedure that is included in the record of the individual.



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2. **Suspension.** A suspension is an action that places an individual in a non-duty status for a specified period, for a violation of: any federal, State, or County law or regulation; Commission policy, procedure, or regulation; or any order of the **Fire Administrator**. A suspension may include prohibiting an individual's presence at any **MCFRS** premises during the suspension period.
3. **Dismissal.** Dismissal is the permanent removal of **LFRD personnel** from the **IECS**, including prohibiting the individual's presence at any **MCFRS** premises or activities.

Sec. 7. Disciplinary Process.

a. Statement of Charges.

1. Before taking a disciplinary action, the **Fire Administrator** must give the individual a Statement of Charges that discloses:
 - A. the proposed disciplinary action;
 - B. the specific reasons for the proposed disciplinary action, including the dates, times, and places of events and names of others involved, as appropriate;
 - C. that the individual may respond orally, in writing, or both;
 - D. to whom to direct any response;
 - E. the deadline for submitting a response; and
 - F. that the individual may be represented by another when responding to the Statement of Charges.
2. The **Fire Administrator** must allow the individual at least 10 working days after receiving the Statement of Charges to respond.
3. If the individual responds to the Statement of Charges, the **Fire Administrator** must consider the response and decide whether:
 - A. to proceed with the proposed disciplinary action;



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B. to not take any disciplinary action; or

C. to take a different disciplinary action.

4. If additional information is obtained and developed during this process before a Notice of Disciplinary Action is issued, the **Fire Administrator** may issue a new Statement of Charges, if the **Fire Administrator** determines that a more severe disciplinary action other than that stated in the original Statement of Charges is appropriate.

b. **Notice of Disciplinary Action.** Upon consideration of the response to the Statement of Charges, the **Fire Administrator** must issue a notice of disciplinary action. A notice of disciplinary action must include:

1. the type of disciplinary action that will be taken;
2. the date on which the disciplinary action will take effect;
3. the specific reasons for the disciplinary action, including dates, times, places, and names of others involved, as appropriate;
4. whether the individual responded to the Statement of Charges, and whether the response, if any, influenced the decision on the disciplinary action;
5. notice of the right to appeal an action or order of the **Fire Administrator** to the Fire and Rescue Commission; and
6. the deadline for filing an FRC appeal.

Sec. 8. Immediate Suspension/Removal of LFRD Personnel.

- a. The **Fire Administrator** may immediately relieve **LFRD personnel** from duty and prohibit their presence at any **MCFRS** premises for misconduct constituting a **serious violation** under the Commission's *Code of Ethics and On-duty Personal Conduct Regulation*, if the presence of the individual is reasonably likely to disrupt activities in any **MCFRS** premises.



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b. **Suspension Pending Investigation of Charges or Trial.**

The **Fire Administrator** may expel **LFRD personnel** from the **IECS** for a **serious violation**, including prohibiting the individual's presence at any **MCFRS** premises or activities, and require the individual to relinquish possession of **MCFRS** property and equipment to its proper owner, or take other action permitted by law or regulation, for an indefinite period while the individual is:

1. being investigated by an **LFRD**, **OIA**, or any federal, State, or County agency, including any law enforcement agency, for an offense that is reasonably related to the individual's **MCFRS** activity;
2. awaiting trial in a judicial or quasi-judicial hearing, or related appeals, for an offense that is related to the individual's **MCFRS** activity; or
3. awaiting trial in a judicial proceeding on a felony charge or indictment.

Sec. 9. **Resignation after Disciplinary Action is Initiated.** If an individual resigns after disciplinary action has been initiated, the **Fire Administrator** may indicate on the individual's separation papers that:

1. disciplinary action is pending; and
2. the individual is not eligible for reinstatement to the **IECS**.

Sec. 10. **Expunging Disciplinary Records.** The **Fire Administrator** must expunge written reprimands contained in the individual's file after one year. All other disciplinary actions, other than dismissal or disciplinary resignation, must be expunged after 5 years. Once a document is expunged, it must not be used in any future disciplinary action.

Sec. 11. **Severability.** Whenever a provision of this Commission Executive Regulation conflicts with Montgomery County Code Sec. 21-1, *et seq.*, the County Code's provisions prevail. If any provision of this Executive Regulation is found to violate any law or regulation, the remaining portion of this Executive Regulation remains effective.



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Sec. 12. **Enforcement.** The **Fire Administrator** is the enforcement authority for all policies and regulations of the Montgomery County Fire and Rescue Service.

Sec. 13. **Effective Date.** This Temporary Regulation is effective when the County Council receives it.

Attest:

Gordon Aoyagi, Chairman
Fire and Rescue Commission

Date

Enforcement Temporary Regulation 12-12-03 bf wp